

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**LINDA L. KITZMILLER and
RICHARD C. KITZMILLER,**

Plaintiffs,

v.

**Civil Action No. 2:05 CV 22
(Maxwell)**

JEFFERSON SUPPLY COMPANY,

**Defendant and
Third Party Plaintiff,**

v.

THE BUTCHER COMPANY,

Third Party Defendant.

ORDER

By Order entered on September 19, 2005, the Court referred the above-styled matter to Magistrate Judge John. S. Kaull for pretrial development. On November 1, 2005, Jefferson filed a Motion to Dismiss Counterclaim Filed by Third-Party Defendant, and Butcher filed a Response to Jefferson's Motion to Dismiss on November 14, 2005. On December 2, 2005, Magistrate Judge Kaull filed with the Court his Report and Recommendation recommending that Jefferson Supply Company's Motion to Dismiss Counterclaim Filed by Third-Party Defendant be denied. Magistrate Judge Kaull's Report and Recommendation further directed the parties, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed. Accordingly, it is

ORDERED that Magistrate Judge Kaul's Report and Recommendation be, and the same hereby is, accepted in whole. It is further

ORDERED that Jefferson Supply Company's Motion to Dismiss Counterclaim Filed by Third-Party Defendant be, and the same hereby is **DENIED**. It is further

ORDERED that The Butcher Company's Counter Motion to Strike be **DENIED as MOOT**.

The Clerk is hereby directed to transmit copies of this Order to all counsel of record.

ENTER: January 18th, 2006


United States District Judge